11/Maeder

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Automaker, Inc.--Request for Reconsideration

File: B-236601.2

Date: May 7, 1990

Sharon M. Hogge, for the protester.
Jacqueline Maeder, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

1. Request for reconsideration is denied where the protester fails to show any error of fact or law that would warrant reversal or modification of prior decision, but essentially reiterates arguments considered in the initial decision.

2. General Accounting Office will not consider a request for reconsideration on the basis of the protester's subsequent provision of facts and information which were available to the protester, but which it failed to present at the time the protest was considered by our Office, particularly since the new information indicates that the protest was untimely when originally filed.

DECISION

Automaker, Inc. requests reconsideration of our decision in Automaker, Inc., B-236601, Dec. 20, 1989, 89-2 CPD ¶ 571. In that decision, we denied Automaker's protest of the award of a contract to Engineering, Inc., for a robotic paint booth, referred to as a Small Aircraft Finish Application Robotic Installation (SAFARI), to prepare and paint the F-15 aircraft, under request for proposals (RFP) No. F09650-89-R-0102 issued by the Warner Robins Air Logistics Center.

We deny the request for reconsideration.

The RFP called for the installation of a stand-alone paint booth as a basic requirement, with options consisting of: (1) an advanced heating, ventilation, air-conditioning (HVAC) system; (2) an air-filtration system; (3) a chemical mixing and dispensing system; and (4) a robotic system.

There were a number of different line items under the basic requirement and under each of the options. The solicitation required the proposals to include the booth and all options and indicated that the government reserved the right to exercise the options at a later date, separate from the booth.

Award was made to Engineering as the low priced, technically acceptable offeror on July 31, 1989, for the basic requirement and option 1. A notice of award was sent to Automaker indicating that award was made to Engineering at a price of $2,301,575, for specific line items, and that award was based on evaluation of the basic requirement and all options.

In its original protest, Automaker argued that because only one of four options was exercised at the time of award, the evaluation should have been based on only the basic requirement and the option awarded, and not on the basic requirement and all options. Automaker asserted that the award was "in disagreement with the evaluation factors listed in the solicitation" and argued that "procurement procedure was abridged for the apparent benefit of Engineering, Inc." On October 10, after receiving the agency's report on the protest, Automaker augmented its original protest and alleged that Engineering's offer was unbalanced for options 1 and 2. On October 27, Automaker also protested the agency's failure to award line item 1001AB, training for the HVAC system.

We noted in our prior decision that the solicitation included both the clause at Federal Acquisition Regulation (FAR) § 52.217-4 (FAC 84-37), entitled Evaluation of Options Exercised at Time of Contract Award, and the clause at FAR § 52.217-5(a) (FAC 84-37), entitled Evaluation of Options. Under FAR § 52.217-4, evaluation is based on the total price for the basic requirement together with any option(s) exercised at the time of award, while FAR § 52.217-5 provides for evaluation based on adding the total price for all options to the total price for the basic requirement. However, the agency report established that Automaker's offer was the higher of the two, based on either total price or on the line items actually awarded. Since Engineering was the low offeror under either award clause, we found that Automaker was not prejudiced by the price evaluation and found no reason to disturb the award on this basis. See Browning-Ferris Indus. of the South Atlantic, Inc.; Reliable Trash Serv. Co. of Md., Inc., B-217073; B-218131, Apr. 9, 1985, 85-1 CPD ¶ 406.

We dismissed the protest regarding the agency's failure to award line item 1001AB, training for the HVAC system, because this was a new and independent ground of protest which was untimely filed more than 10 working days after the protest basis was or should have been known. See 4 C.F.R. § 21.2(a)(2) (1989); Tri-States Serv., B-232322, Nov. 3, 1988, 88-2 CPD ¶ 436. We noted that it was clear in the award notice and in a correction to the award notice that the HVAC system training was not awarded, and that Automaker's protest on this issue was not received in our Office within 10 days after Automaker knew its basis for protest.

We did consider Automaker's allegation of unbalancing since we believed that it was filed within 10 days of Automaker's receipt of the pricing information which was contained in the agency report and which provided this basis for protest. We concluded from our review of the record that Engineering's offer was not unbalanced. We noted that the two offerors proposed significantly different technical approaches and systems and that the agency found that Engineering's offer did not contain enhanced or nominal prices when assessed in conjunction with its technical proposal. Further, we pointed out that there was nothing in the record which suggested that award to Engineering would not result in the lowest cost to the government. Semcor, Inc., B-227050, Aug. 20, 1987, 87-2 CPD ¶ 185.

In its request for reconsideration, Automaker asserts that we improperly dismissed as untimely its protest of the agency's failure to award line item 1001AB. Automaker states that this issue is part of the basis of its original protest, presumably that the Air Force misapplied the evaluation factors specified in the solicitation. The protester argues that, had the Air Force awarded this training, it would have had the lower price for the basic requirement and the options exercised at the time of award. Automaker says that this line item should have been awarded but that it could not have specifically questioned the failure to award this training in its original submission because it did not have pricing information until August 22, when it received a telefax, which it appended to its reconsideration request, containing line item price information for each offeror.

There is simply nothing in the record which reasonably suggests that the protester intended to include the agency's failure to award line item 1001AB as part of its assertion that the Air Force misapplied the evaluation factors specified in the solicitation. By its own submission, Automaker knew the line item prices by August 22 and should

have specifically protested the agency's failure to award HVAC training within 10 working days of this date. As noted above, this training line item was not mentioned by the protester until October 27. Accordingly, this ground of protest was properly dismissed as untimely.

Next, Automaker asserts that we did not adequately investigate or evaluate its allegation that Engineering's offer was unbalanced as to options 1 and 2. Automaker argues that our Office did not evaluate Engineering's offer to determine if it was materially unbalanced; we did not consider the evidence Automaker submitted and we did not supply any evidence to support the claim that Engineering's design was proprietary.

Automaker is simply arguing, as it did in its original protest, that Engineering's offer should have been rejected as unbalanced and that award should have been made to Automaker. As indicated above, however, we fully considered these arguments previously. As stated in our prior decision and as supported by the record, Engineering proposed a SAFARI, the exact nature of which is proprietary, which, because it differed significantly in design from that proposed by Automaker, was also priced differently. While it is clear that Automaker does not agree with our decision, mere disagreement does not provide a valid basis for reconsideration. See TCA Reservations, Inc.--Reconsideration, B-218615.2, Oct. 8, 1985, 85-2 CPD ¶ 389. Moreover, Automaker's own submission on reconsideration shows that Automaker actually received the pricing information that formed the basis of its unbalancing allegation on August 22, more than 1 month before Automaker actually alleged unbalancing. Thus, it is now clear that Automaker was required to file its allegation of unbalancing within 10 days of its receipt of the August 22 telefax. 4 C.F.R. § 21.2(a)(2). We originally considered the unbalancing allegation because it appeared to be timely filed. In view of this new information, which the protester first supplied on reconsideration, we now find this issue untimely, and have no basis to reconsider our prior decision.

The request for reconsideration is denied.

James F. Hinchman
General Counsel